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9 UNITED STATES DISTRICT COURT  
10 CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION  
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15 KAY HAMILTON,

16 Plaintiff,

17 v.

18 CAROLYN W. COLVIN, Acting  
19 Commissioner of Social Security,

20 Defendant.  
21

Case No.: CV 12-9459-SH

MEMORANDUM DECISION

22 **I. PROCEEDINGS**

23 This matter is before the Court for review of the decision of the  
24 Commissioner of Social Security denying plaintiff's applications for Social  
25 Security Disability Insurance Benefits and Supplemental Security Income  
26 Benefits. Pursuant to 28 U.S.C. § 636(c), the parties have consented that the case  
27 may be handled by the undersigned. The action arises under 42 U.S.C. § 405(g),  
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1 which authorizes the Court to enter judgment upon the pleadings and transcript  
2 of the record before the Commissioner. The plaintiff and the defendant have  
3 filed their pleadings (Defendant's Brief in Support of Defendant's Answer; Brief  
4 in Support of Plaintiff's Complaint ["Plaintiff's Brief"]), and the defendant has  
5 filed the certified transcript of record. After reviewing the matter, the Court  
6 concludes that the decision of the Commissioner should be affirmed.

## 7 **II. BACKGROUND**

8 On March 8, 2010, plaintiff Kay Marie Hamilton ("plaintiff") filed an  
9 application for a period of disability or Disability Insurance Benefits and an  
10 application for Supplemental Security Income. Both applications alleged an  
11 inability to work since August 31, 2009, due to an affective (mood) disorder and  
12 asthma. (See Administrative Record ["AR"] 93-97, 120-127). Plaintiff's  
13 applications were denied on July 16, 2010, and denied upon reconsideration on  
14 October 28, 2010. (See AR 99-110). On August 10, 2011, following the  
15 administrative hearing on July 11, 2011, an Administrative Law Judge ("ALJ")  
16 found that plaintiff had a non-severe impairment -- an affective (mood) disorder--  
17 - and a severe impairment -- asthma-- but determined that plaintiff was not  
18 disabled within the meaning of the Social Security Act. (See AR 12-17).

19 Following the Appeals Council's denial of plaintiff's request for a review  
20 of the hearing decision (AR 1-2), plaintiff filed an action in this Court.

21 Plaintiff makes one challenge to the ALJ's Decision denying benefits.  
22 Plaintiff alleges that the ALJ erred in finding plaintiff's mental impairment  
23 (affective [mood] disorder) non-severe.

24 For the reasons discussed below, the Court finds that plaintiff's claim of  
25 error does not have merit.

## 26 **III. DISCUSSION**

**ISSUE NO. 1:**

Plaintiff asserts that the ALJ improperly found plaintiff's impairment to be non-severe. Specifically, plaintiff claims that: (1) the ALJ did not apply the correct standard of law; (2) the ALJ did not properly consider the treating psychiatrists' opinions; (3) the ALJ did not properly consider plaintiff's credibility; and (4) the ALJ did not properly consider the lay witness testimony. In response, defendant argues that the ALJ properly concluded that plaintiff's mood disorder was not severe.

**A. The ALJ Applied the Correct Legal Standard.**

Plaintiff contends that the ALJ applied the wrong standard of law in determining that plaintiff's impairment (affective [mood] disorder) was not severe<sup>1</sup>. Specifically, plaintiff claims "the ALJ improperly looked to only [paragraph B] listing criteria" in determining severity and failed to consider other evidence in the record, including "medical evidence, plaintiff's testimony, and statements of lay witnesses." (Plaintiff's Brief at 6, 22). Plaintiff further contends that because the ALJ failed to consider the other evidence in the record, the ALJ did not have sufficient evidence to "clearly establish" his finding of non-severity. (Plaintiff's Brief at 6). In response, defendant argues that the ALJ applied the correct standard of law and properly considered record evidence.

Here, the ALJ found that plaintiff's "medically determinable depression and anxiety disorders do not cause more than minimal limitations in her ability to perform basic mental work activities."<sup>2</sup> (AR 13). In making this finding, the

<sup>1</sup> Although plaintiff asserts that the ALJ applied the wrong legal standard in determining plaintiff's severity, plaintiff's contention appears to be not whether the ALJ used the right legal standard, but whether substantial evidence supported the ALJ's determination that plaintiff's mental impairment was not severe. This court will address the issue of whether the ALJ had substantial evidence to support his findings.

<sup>2</sup> These activities include: (1) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (2) capacities for seeing, hearing, and speaking; (3) understanding, carrying out, and remembering simple instructions; (4) use of judgment; (5) responding appropriately to supervision, co-workers and usual work situations; and (6) dealing with changes in

1 ALJ “considered four broad functional areas known as paragraph B criteria”  
2 which are “set out in the disability regulations for evaluating mental disorders.”  
3 (AR 13). In his decision, the ALJ identified each of these criteria -- activities of  
4 daily living, social functioning, concentration, persistence or pace, and episodes  
5 of decompensation, see 20 C.F.R., Part 404, Subpt. P, App. 1 -- and determined  
6 that since plaintiff had “no more than ‘mild’ limitations in any of the first three  
7 functional areas, and ‘no’ episodes of decompensation,” her impairment (mood  
8 disorder) was non-severe. (AR 12-15).

9 Plaintiff argues that it was improper for the ALJ to look at the paragraph B  
10 listing criteria in determining severity. However, the ALJ properly applied  
11 paragraph B criteria pursuant to 20 C.F.R., Part 404, Subpt. P, App. 1 (stating  
12 that severity is measured according to “the functional limitations imposed by  
13 mental impairments” and that those functional limitations are assessed by “using  
14 the four criteria in paragraph B of the listings”). Therefore, it was proper for the  
15 ALJ to apply the paragraph B criteria in determining that plaintiff’s mental  
16 impairment was not severe.

17 Plaintiff also argues that the ALJ erred by looking at the paragraph B  
18 criteria to the exclusion of other evidence in the record. However, in  
19 determining the degree of plaintiff’s limitations under each of the paragraph B  
20 criteria, the ALJ clearly considered the record evidence. The ALJ examined the  
21 following: the opinions of plaintiff’s physicians (see AR 13-15 ) [discussing the  
22 medical assessments of the two treating psychiatrists, the state agency  
23 psychiatrist, and the consultative examiner as they pertain to social functioning  
24 and concentration, persistence, and pace]; plaintiff’s testimony (see AR 13-  
25 14) [discussing plaintiff’s testimony about her daily activities and personal  
26 relationships as they pertain to activities of daily living, social functioning, and  
27 concentration, persistence and pace]; and lay witness testimony (see AR 13-

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a routine work setting. 20 C.F.R. § 404.1521(b).

14)[discussing written statements from plaintiff's friend, brother, father, and former employer about the limitations caused by plaintiff's mental impairment]. Therefore, the ALJ's decision about the non-severity of plaintiff's mental impairment was supported by substantial evidence in the record. See Molina v. Astrue, 674 F.3d 1104, 1110-11 (9th Cir. 2012)(substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion" and "must be more than a mere scintilla, but may be less than a preponderance").

**B. The ALJ Properly Considered the Treating Psychiatrists' Opinions.**

Plaintiff asserts that the ALJ failed to give proper weight to the opinions of Dr. Cotsen and Dr. Brown, plaintiff's treating psychiatrists. Defendant asserts that the ALJ provided specific reasons for rejecting the treating psychiatrists' opinions.

Although a treating physician's opinion is generally afforded the greatest weight in disability cases, it is not binding on an ALJ with respect to the existence of an impairment or the ultimate determination of disability. Batson v. Comm'r of Soc. Sec. Admin., 359 F.3d 1190, 1195 (9th Cir. 2004). The weight given a treating physician's opinion depends on whether it is supported by sufficient medical data and is consistent with other evidence in the record. 20 C.F.R. § 416.927(b)-(d). If the treating doctor's opinion is contradicted by another doctor, the ALJ must provide "specific and legitimate reasons" for rejecting the treating physician's opinion. Orn v. Astrue, 495 F.3d 625, 632 (9th Cir. 2007).

Adam Cotsen, M.D., a psychiatrist at the Cedars-Sinai Medical Center, treated plaintiff from December 1996 until January 2011. (See AR 238-50, 293-304). Dr. Cotsen diagnosed plaintiff with "major depression that has been complicated by intense anxiety and overspending/shopping." (AR 290). In a Work Capacity Evaluation (Mental) form, dated February 12, 2010, Dr. Cotsen opined that plaintiff had the following ability to do work related activities on a

1 day to day basis: none to slight limitations in most areas of functioning<sup>3</sup>, and that  
2 plaintiff would miss one day of work a month. (See AR 174-176).

3 Paul Brown, M.D., a psychiatrist, treated plaintiff from March 2011 to  
4 May 2011. In a Medical Opinion Re: Ability To Do Work-Related Activities  
5 (Mental) form, dated June 8, 2011, Dr. Brown opined that plaintiff was seriously  
6 limited or unable to meet competitive standards in most areas of functioning<sup>4</sup>,  
7 and would miss more than four days of work a month. (See AR 356-357).

8 The ALJ found the opinions of the two treating psychiatrists inconsistent  
9 with each other, and specified where he found those opinions to be  
10 irreconcilable. The ALJ specifically found inconsistencies as follows: Dr. Paul  
11 Brown “found the claimant was ‘limited but satisfactory’ regarding instructions  
12 and criticism from supervisors (compared to the extreme limitations determined

13 <sup>3</sup> In the Work Capacity Evaluation (Mental) form, Dr. Cotsen determined that  
14 plaintiff is: not limited in her ability to remember locations and work-like  
15 procedures, to carry out very short and detailed instructions, to sustain an ordinary  
16 routine without special supervision, to make simple, work-related decisions, to get  
17 along with co-workers or peers without distracting them, and to maintain socially  
18 appropriate behavior and to adhere to basic standards of neatness and cleanliness;  
19 slightly limited in her ability to understand and remember very short and simple  
20 instructions, to maintain attention and concentration for extended periods, to  
21 perform activities within a schedule, to work in coordination with or in proximity  
22 to others, to act appropriately with the general public, and to set realistic goals or  
23 make plans independently of others; markedly limited in her ability to ask simple  
24 questions or request assistance, and to respond appropriately to changes in the work  
25 place; and extremely limited in her ability to accept instructions and respond  
26 appropriately to criticism of supervisors. (See AR 174-175).

27 <sup>4</sup> In the Medical Opinion Re: Ability To Do Work-Related Activities (Mental)  
28 form, Dr. Brown determined that plaintiff is: limited but satisfactory in her ability  
to carry out very short and detailed instructions, to accept instructions and respond  
appropriately to criticism of supervisors, to get along with co-workers or peers  
without distracting them, to interact appropriately with the general public, and to  
maintain socially appropriate behavior; seriously limited in her ability to remember  
work-like procedures, to understand and remember very short and simple  
instructions, to maintain attention in a two hour segment, to sustain an ordinary  
routine without special supervision, to make simple, work-relate decisions, to ask  
simple questions or request assistance, and to understand and remember detailed  
instructions; and unable to meet competitive standards in her ability to work in  
coordination with or in proximity to others, to deal with normal work stress, to carry  
out detailed instructions, and set realistic goals or make plans independently of  
others. (AR 356-357).

1 by Dr. Cotsen); ‘unable to meet competitive standards’ in working in  
2 coordination with proximity to others without distraction (compared to light  
3 limitations [determined by Dr. Cotsen]); ‘limited but satisfactory’ in getting  
4 along with coworkers or peers without undue distraction or behavioral extremes  
5 (compared to no limitations [determined by Dr. Cotsen]) ...” (AR 14). (See AR  
6 13-15).

7 In resolving these conflicts, the ALJ found that plaintiff had only mild  
8 limitations in concentration, persistence, and pace, and in her abilities to socially  
9 function, based on the medical evidence in the record, including: the Psychiatric  
10 Review Technique form prepared by Dr. P. M. Balson, the State Agency  
11 psychiatric consultant (see AR 261-71)[finding that plaintiff is capable of doing  
12 simple and complex tasks; has only mild limitations in peers and public relations;  
13 and has mild to moderate limitations in handling stress]; and the Consultative  
14 Psychiatric Examination report prepared by Dr. Ernest Bagner, the psychiatric  
15 consultative examiner (see AR 252-55)[finding that plaintiff has no limitations  
16 completing simple tasks; mild limitations interacting with peers and the public,  
17 maintaining concentration, and completing complex tasks; and mild to moderate  
18 limitations handling normal stress at work and completing a normal work week  
19 without interruption].

20 Since an examining physician’s opinion may constitute substantial  
21 evidence in support of the ALJ’s finding of an impairment, and since the  
22 opinions of non-examining physicians may also serve as substantial evidence  
23 when their opinions are consistent with other evidence in the record, the ALJ  
24 appropriately gave the opinions of Dr. Balson and Dr. Bagner significant weight.  
25 Tonapetyan v. Halter, 242 F.3d 1144, 1149 (9th Cir. 2001); Thomas v. Barnhart,  
26 278 F.3d 947, 957 (9th Cir. 2002).

27 **C. The ALJ Properly Considered Plaintiff’s Credibility.**  
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1 Plaintiff argues that the ALJ selectively reviewed plaintiff's testimony and  
2 failed to provide a clear and convincing reason for rejecting it. Defendant asserts  
3 that the ALJ relied on substantial evidence to discredit plaintiff's testimony.

4 At the hearing on July 11, 2011, plaintiff testified about her background,  
5 work history, symptoms, medications, and daily activities. (See AR 69-76, 81-  
6 84). Specifically, plaintiff testified she is able to cook, clean, drive, do laundry,  
7 go grocery and clothes shopping, use a computer, care for her cats, attend Living  
8 History reenactments, teach Scottish Highland dancing, and attend Scottish  
9 Highland dancing events. (See AR 71-75). Plaintiff also testified that she was  
10 unable to work due to her inability to cope with stress and because criticism from  
11 others would elicit a "fight or flight" response, or cause her to "fall apart." (See  
12 AR 75-78).

13 In the Decision, the ALJ noted inconsistencies between plaintiff's above  
14 testimony and the record evidence as follows:

15 The claimant has mild limitations [in the functional area of  
16 activities of daily living]. The record, including statements of the  
17 claimant's friend Connie Nader, shows that she is able to: take care of her  
18 personal needs; prepare meals; clean the house; take out the trash; do the  
19 laundry; read; watch videos; use a computer; care for her cats; drive a car;  
20 shop in stores; and teach Scottish Highland dancing and attend dancing  
21 events. (AR 13).

22 Additionally, in regard to plaintiff's social functioning, the ALJ noted that  
23 one of the plaintiff's treating psychiatrists, Dr. Brown, had found the plaintiff  
24 "limited but satisfactory" regarding instructions and criticism from supervisors.  
25 (AR 14, citing 356-57).

26 The ALJ properly found plaintiff's testimony less reliable based on  
27 physician evidence saying that she is capable of complex tasks and only mildly  
28 limited in her ability to socially function. (See AR 271); See Thomas, 278 F.3d



1 at 958-59 (holding that an ALJ may consider “testimony from physicians and  
2 third parties concerning the nature, severity, and effect of the symptoms of which  
3 claimant complains,” when weighing credibility).

4 Moreover, the ALJ properly found plaintiff less credible based on Ms.  
5 Nader’s statement about plaintiff’s daily conduct. (See AR 180-90); See  
6 Thomas, 278 F.3d at 958-59 (noting that when weighing the claimant’s  
7 credibility, the ALJ may consider inconsistencies between claimant’s testimony  
8 and her conduct).

9 Therefore, the ALJ provided clear and convincing reasons for rejecting  
10 plaintiff’s subjective complaints. See Smolen v. Chater, 80 F.3d 1273, 1281 (9th  
11 Cir. 1996)(holding that the ALJ may reject the claimant's testimony about the  
12 severity of her symptoms by offering specific, clear and convincing reasons for  
13 doing so).

#### 14 **D. The ALJ Properly Considered Lay Witness Testimony.**

15 Plaintiff contends that the ALJ did not properly consider the testimony of  
16 the lay witnesses. In response, defendant argues that the ALJ provided valid  
17 reasons, supported by substantial evidence, for rejecting the lay witness  
18 statements.

19 Here, plaintiff’s brother, father, former employer, and friend each  
20 submitted a written statement. (See AR 180-90, 226-27, 367, 370). To properly  
21 reject lay testimony, the ALJ must give a reason germane to the witness for  
22 doing so. Carmickle v. Commissioner, 533 F.3d 1155, 1164 (9th Cir. 2008).

23 Plaintiff argues that the ALJ failed to properly consider lay witness  
24 testimony because the ALJ did not explicitly reject the testimony in regard to the  
25 severity of plaintiff’s mental impairment. (Plaintiff’s Brief at 21). Although the  
26 ALJ did not recite particular words for rejecting lay testimony, see Magallanes v.  
27 Bowen, 881 F.2d 747, 755 (9th Cir. 1989)(holding that it is not required for the  
28 ALJ to “recite the magic words, ‘I reject [an individual’s] opinion because...’”),

1 the ALJ clearly considered the testimony of each witness and discussed evidence  
2 to the contrary of their statements. See Id (holding that as long as the ALJ  
3 summarizes “the facts and conflicting clinical evidence in detailed and thorough  
4 fashion, stating his interpretation and making findings,” the reviewing court may  
5 draw inferences from the ALJ’s opinion).

6 The ALJ considered the witness testimony as follows:

7 The claimant’s brother and father state that the claimant has  
8 difficulty accepting criticism; a friend reports difficulty with work and  
9 personal relationships; a former employer cites difficulties in relationships  
10 with other employees. However, the evidence shows [plaintiff] has a close  
11 relationship with her family; ... has a good relationship with her friends;  
12 talks to her family and friends frequently; e-mails her friends and her  
13 brother; celebrates birthdays; teaches Scottish Highland dancing and meets  
14 with her dancing friends one to four days a week from an hour to the entire  
15 day; and has a long-term relationship with a male friend (who is also her  
16 landlord). ... A review of other [medical] opinions in the record ...  
17 indicates only mild limitations in social functioning. (AR 13, citing, 72-75,  
18 180-87, 226, 253, 255, 269, 367, 370).

19 Additionally, the ALJ considered the lay witness testimony in regard to  
20 concentration, persistence or pace as follows:

21 According to her former employer, the claimant would be shown  
22 something on one day but would look at it like she had never seen it before  
23 on the next day. Ms. Nader, the claimant’s friend also reports problems  
24 with memory, completing tasks, concentration, and following instructions.  
25 However, the claimant is still able to read, study history, use a computer,  
26 and teach Scottish Highland dancing.

27 [The examining and state agency physician] both only find mild  
28 limitations in this area. ...I conclude that the claimant has mild limitations

1 in concentration, persistence, and pace. (AR 14, citing, 72-75,184-86,  
2 226, 255, 269).

3 The ALJ properly considered the opinions of plaintiff's brother, father,  
4 former employer, and friend because they were inconsistent with plaintiff's  
5 testimony and the medical evidence. See Baylis v. Barnhart, 427 F.3d 1211,  
6 1218 (9th Cir. 2005)(holding that "inconsistency with medical evidence" is a  
7 germane reason for discounting lay witness testimony); Carmickle v. Comm'r.  
8 Soc. Sec. Admin., 533 F.3d 1155, 1164 (9th Cir. 2008)(holding that  
9 inconsistency with plaintiff's conduct is a proper basis on which to reject lay  
10 witness testimony).

#### 11 **IV. CONCLUSION**

12 For the forgoing reasons, the decision of the Commissioner is affirmed.

13 DATED: July 30, 2013

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18 STEPHEN J. HILLMAN

19 UNITED STATES MAGISTRATE JUDGE  
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